

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Initially, the Applicants would like to thank the Examiner for the indication that claim 41 is allowed and claims 4, 15, 19, 21-29, 37, 39 and 40 contain allowable subject matter.

However, in the Final Official Action, the Examiner has maintained the rejection of claims 1, 6, 8-14, 17, 18, 35 and 38 under 35 U.S.C. § 102(b). Specifically, the Examiner rejects claims 1, 6, 8-14, 17-19, 35 and 38 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,119,913 to Adams et al., (hereinafter "Adams").

In response, Applicants again respectfully traverse the Examiner's rejection under 35 U.S.C. § 102(b) for at least the reasons set forth below.

In the previous response, the Applicants respectfully submitted that Adams does not disclose that the tissue is lifted through bending whereas the claims recite "a lifting member which lifts the living-body tissue through bending" and which is clearly shown in Figure 8 of the present application which illustrates the tissue (27) being lifted by bending of the endoscope (2).

In the Examiner's "Response to Arguments" at page 2 of the Final Official Action, the Examiner disagrees with our previous arguments and indicates that "Adams shows in Figure 9a lifting through bending (citing column 9, lines 6-32). Applicants respectfully disagree.

Adams discloses that the tissue is pulled into the device by withdrawing the endoscope and forceps therewith (column 9, lines 10-14 and 26-28). Figure 9a merely shows a forceps that is used to grasp the tissue. As discussed above, Adams only teaches that once

the tissue is grasped by the forceps, the same is pulled into the device by withdrawing the endoscope and forceps. The withdrawal of the endoscope and forceps results in the pulling of the tissue into the device. Thus, Adams simply does not disclose or suggest lifting the tissue into the device by bending but by withdrawal of the endoscope into the device.

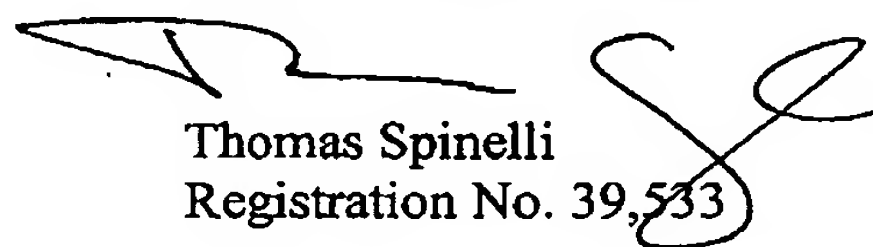
Lifting of the tissue through bending results in advantages that are not present in the prior art, including the device of Adams. For example, in the endoscopic treatment system of claims 1 and 38, the distance by which the tissue needs to travel into the device is shorter than the distance traveled by withdrawing. Furthermore, it is easier to lift the tissue in the vertical direction (e.g., a direction parallel to the withdrawing direction) through bending than it is through withdrawing, as taught by Adams.

Thus, an endoscopic treatment system having the features discussed above and as recited in independent claims 1 and 38, is nowhere disclosed in Adams. Since it has been decided that "anticipation requires the presence in a single prior art reference, disclosure of each and every element of the claimed invention, arranged as in the claim,"¹ independent claims 1 and 38 are not anticipated by Adams. Accordingly, independent claims 1 and 38 patentably distinguish over Adams and are allowable. Claims 6, 8-14, 17-19 and 35 being dependent upon claim 1, are thus at least allowable therewith. Consequently, the Examiner is respectfully requested to withdraw the rejection of claims 1, 6, 8-14, 17-19, 35 and 38 under 35 U.S.C. § 102(b).

¹ Lindeman Maschinenfabrik GMBH v. American Hoist and Derrick Company, 730 F.2d 1452, 1458; 221 U.S.P.Q. 481, 485 (Fed. Cir., 1984).

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



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